



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

May 8, 1953

Hon. Geo. B. Butler, Chairman
Board of Insurance Commissioners
Austin, Texas

Letter Opinion No. MS-32

Re: Present status of Article
19.11, Texas Insurance Code,
Vernon's Civil Statutes.

Dear Sir:

Your request for an opinion of this office dated March 18, as amended by your letter of April 24, makes inquiry as to the present status and effect of Article 19.11, Texas Insurance Code, V.C.S.

Article 19.11 of the Code reads:

"The schedule of fees set out in Article 4.07 of this code, so far as pertinent, shall apply to reciprocal exchanges and their attorneys in fact. Said exchanges shall pay a tax of three and five-tenths (3.5%) per cent on all premiums collected, except fire premiums, and except personal accident insurance or health and accident insurance premiums, under the provisions of Article 4.02 of this code, subject to the reduction by investment in Texas securities as therein provided; and exchanges writing personal accident insurance, or health and accident insurance, shall pay a tax of one (1%) per cent of such premiums collected under the provisions of and in accordance with the terms of Article 4.04 of this code. Exchanges writing workmen's compensation insurance shall pay a further tax of three-fifths of one ($\frac{3}{5}$ of 1%) per cent, or such lesser amount as the Board of Insurance Commissioners may assess, on workmen's compensation premiums collected in this State under the provisions of Article 5.68 of this code. An additional tax of one-fifth of one ($\frac{1}{5}$ of 1%) per cent, or such lesser amount as the Board of Insurance Commissioners may assess, shall be paid by such exchanges on gross premiums collected for motor vehicle insurance under the provisions of Article 5.12 of this code." Acts 1951, 52nd Leg., ch. 491.

The 52nd Legislature, in 1951, codified the Texas insurance laws in Senate Bill 236, now known as the Texas Insurance Code. The bill contained a clause specifically repealing the various statutes being codified and also contained the provision that the codification was in no wise to change the substantive law then existing. In the original Senate Bill, Articles 4.02, 4.03 and 4.04 were to replace existing statutes Articles 7064, 4769 and 7064a, V.C.S., respectively. These statutes were taxing measures and by virtue of House Concurrent Resolution No. 179 were deleted from the Senate Bill, and Articles 7064, 4769 and 7064a were specifically excluded from the repealing clause of the codification. The reference in Article 19.11 was obviously to Articles 4.02 and 4.04 as originally written and did not contemplate the deletions. Subsequent to the passage of the Code, Articles 7064, 4769 and 7064a were amended. It is our opinion that only the portion of Article 19.11 referring to the schedule of fees as set out in Article 4.07 can be given any affect for the following reasons:

(1) The Article's three and five-tenths (3.5%) per cent tax upon all premiums except fire, and health and accident, and, one (1%) per cent tax upon health and accident premiums are unconstitutional. These provisions are revenue measures required by Section 33 of Article III of the Constitution of Texas to originate in the House.

(2) The additional taxes of three-fifths of one (3/5 of 1%) per cent upon workmen's compensation premiums, and one-fifth of one (1/5 of 1%) per cent upon motor vehicle insurance, are repealed by Article 7064, V.C.S., as amended by Acts 52nd Leg., 1951, ch. 402, sec. 15-1, p. 695. Article 7064, V.C.S., was passed subsequent to the Texas Insurance Code (S.B. 236) and is therefore the latest expression of the legislature. It taxes both workmen's compensation and motor vehicle premiums of reciprocal exchanges. The repealing clause of Article 7064 provides:

"This Act shall be cumulative of all other laws and shall repeal Article 4758, Revised Civil Statutes of 1925, as amended, and all other laws only in so far as they levy any tax on any of the organizations affected by this Act or otherwise conflict with this Act, except as provided above."

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You are relegated to the present statutory provisions, to wit: Articles 7064, 4769 and 7064a, V.C.S.

Article 19.11 of the Texas Insurance Code is unconstitutional in part and repealed in part, and, the only portion thereof to be given effect is the schedule of fees as set out in Article 4.07 to be applied to reciprocal exchanges.

Yours very truly,

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Attorney General

By
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Assistant

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